

Plaintiffs' Exhibit 87

(Redacted)

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, :
et al., :
 :
 :
Plaintiffs :
 :
v. : No. 1:23-cv-00108
 :
GOOGLE, LLC, :
 :
 :
Defendants. :

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Monday, August 21, 2023

Video Deposition of CHRISTOPHER KOEPKE,
taken at the Law Offices of Paul, Weiss,
Rifkind, Wharton & Garrison LLP, 2001 K St NW,
Washington, DC, beginning at 9:35 a.m. Eastern
Standard Time, before Ryan K. Black, Registered
Professional Reporter, Certified Livenote
Reporter and Notary Public in and for the
District of Columbia

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<p style="text-align: right;">Page 6</p> <p>1 follows:</p> <p>2 * * *</p> <p>3 EXAMINATION</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Good morning, Mr. Koepke.</p> <p>6 A. Good morning.</p> <p>7 Q. Have you been deposed before?</p> <p>8 A. I think once. I'm not exactly sure it</p> <p>9 was a formal deposition, --</p> <p>10 Q. Okay.</p> <p>11 A. -- but yes.</p> <p>12 Q. Was there a court reporter taking down</p> <p>13 everything you were saying?</p> <p>14 A. No, there was not.</p> <p>15 Q. Okay. So in this deposition,</p> <p>16 it's important that you allow me to finish my</p> <p>17 question before you answer, because our court</p> <p>18 reporter, Mr. Black, is taking down everything</p> <p>19 we're saying --</p> <p>20 A. All right.</p> <p>21 Q. -- and he can't take two people talking</p> <p>22 at the same time. Okay?</p> <p>23 A. All right.</p> <p>24 Q. So please let me finish my question</p> <p>25 before you begin your answer. Okay?</p>	<p style="text-align: right;">Page 8</p> <p>1 healthcare programs. When we need people,</p> <p>2 citizens of America to take an action, it is my</p> <p>3 job to do outreach to help them know what actions</p> <p>4 they need to take. I could probably go on for</p> <p>5 the rest of the day with details on that.</p> <p>6 Q. I'm sure we'll get to it. How long have</p> <p>7 you been the director -- is the strategic</p> <p>8 marketing -- strike that.</p> <p>9 Is the Strategic Marketing Group</p> <p>10 abbreviated SMG?</p> <p>11 A. Yes, it is.</p> <p>12 Q. Okay. How long have you been director</p> <p>13 of SMG?</p> <p>14 A. Approximately nine to ten years.</p> <p>15 Q. And prior to serving as director of SMG,</p> <p>16 what -- what job did you have, if any?</p> <p>17 A. I was the deputy director of the</p> <p>18 Creative Services Group in the Office of</p> <p>19 Communications at the Centers for Medicare and</p> <p>20 Medicaid Services.</p> <p>21 Q. And how long were you the deputy</p> <p>22 director of the Creative Services Group?</p> <p>23 A. I would say three to four years.</p> <p>24 Q. In your role as director of SMG, who do</p> <p>25 you report to?</p>
<p style="text-align: right;">Page 7</p> <p>1 A. Okay.</p> <p>2 Q. Okay. And the court reporter also</p> <p>3 cannot record nonverbal answers or half verbal</p> <p>4 answers, like uh-huh or huh-uh, so please make</p> <p>5 sure to speak in a -- answer the questions</p> <p>6 verbally. Okay?</p> <p>7 A. Okay.</p> <p>8 Q. Okay. And I will assume that you</p> <p>9 understand my questions unless you ask me for a</p> <p>10 clarification. Okay?</p> <p>11 A. Okay.</p> <p>12 Q. And is there any reason you're unable to</p> <p>13 provide your truthful and accurate testimony here</p> <p>14 today?</p> <p>15 A. No.</p> <p>16 Q. Okay. What is your current title?</p> <p>17 A. Director of the Strategic Marketing</p> <p>18 Group in the Office of Communications at the</p> <p>19 Centers for Medicare and Medicaid Services.</p> <p>20 Q. And what are your responsibilities as</p> <p>21 the director of the Strategic Marketing Group at</p> <p>22 the Office of Communications at the Centers for</p> <p>23 Medicare and Medicaid Services?</p> <p>24 A. When -- this federal agency is</p> <p>25 responsible for Medicare, Medicaid and other</p>	<p style="text-align: right;">Page 9</p> <p>1 A. I report to the deputy director of the</p> <p>2 Office of Communications.</p> <p>3 Q. And what is that individual's name?</p> <p>4 A. Mary Wallace.</p> <p>5 Q. How long has Mary Wallace been the</p> <p>6 person to whom you've -- who you report?</p> <p>7 A. Nine to ten years.</p> <p>8 Q. And to whom does Ms. Wallace report?</p> <p>9 MS. CLEMONS: Objection; foundation.</p> <p>10 THE WITNESS: Many people, but the</p> <p>11 administrator of CMS.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. And who is the current administrator of</p> <p>14 CMS?</p> <p>15 A. Chiquita Brooks-LaSure.</p> <p>16 Q. And how long has Ms. LaSure been the</p> <p>17 administrator at CMS?</p> <p>18 MS. CLEMONS: Objection; foundation.</p> <p>19 THE WITNESS: I don't know when she was</p> <p>20 confirmed.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. Okay. How many administrators of CMS</p> <p>23 have you worked under over the course of your</p> <p>24 time as director of SMG?</p> <p>25 A. I could give you an approximate number.</p>

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<p>1 keep going.</p> <p>2 MS. CLEMONS: Okay.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Thank you. I appreciate it. And then</p> <p>5 we can take a break.</p> <p>6 GumGum. Have you heard of GumGum?</p> <p>7 A. Yes.</p> <p>8 Q. Is that a programmatic provider CMS has</p> <p>9 used.</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: We usually use GumGum,</p> <p>12 yes.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. And how do you -- why does CMS use</p> <p>15 GumGum relative to any other programmatic</p> <p>16 provider?</p> <p>17 MS. CLEMONS: Objection; form.</p> <p>18 THE WITNESS: We invest in multiple</p> <p>19 programmatic providers so we can track their ROI,</p> <p>20 their return on investment, to be as efficient as</p> <p>21 possible.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. And what about Adsmovil? Have you heard</p> <p>24 of Adsmovil?</p> <p>25 A. Yes.</p>	<p>1 used?</p> <p>2 MS. CLEMONS: Objection to form.</p> <p>3 THE WITNESS: Yes.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And why has CMS used MNI relative to any</p> <p>6 other programmatic provider?</p> <p>7 MS. CLEMONS: Objection; form.</p> <p>8 THE WITNESS: We invest in multiple</p> <p>9 programmatic providers so we can track their</p> <p>10 return on investment so we can see what is most</p> <p>11 efficient at achieving our goals.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Okay. And then can you think of any</p> <p>14 Google programmatic services that CMS has used?</p> <p>15 MS. CLEMONS: Objection; form.</p> <p>16 THE WITNESS: Yes.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Which ones?</p> <p>19 A. Google Display Network and DV360.</p> <p>20 [REDACTED]</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 MS. CLEMONS: Objection; form.</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
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<p>1 Q. Is that a programmatic provider that CMS</p> <p>2 has used.</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Why do you use Adsmovil relative to any</p> <p>7 other programmatic provider?</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 THE WITNESS: We use multiple</p> <p>10 programmatic providers to track the return on</p> <p>11 investment on a particular campaign to be most</p> <p>12 efficient to achieve our goals for the American</p> <p>13 taxpayer.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And last one. Have you heard of</p> <p>16 QuantiCast?</p> <p>17 A. Yes.</p> <p>18 Q. Is that a programmatic provider that CMS</p> <p>19 has used?</p> <p>20 MS. CLEMONS: Objection; form.</p> <p>21 THE WITNESS: I am not sure.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Okay. Have you heard of MNI?</p> <p>24 A. Yes.</p> <p>25 Q. Is that a programmatic provider CMS has</p>	<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p> <p>6 MS. GOODMAN: Okay. We can take a</p> <p>7 break.</p> <p>8 THE VIDEOGRAPHER: The time is 11:03</p> <p>9 a.m. This ends unit 1. We're off the record.</p> <p>10 (Recess taken.)</p> <p>11 THE VIDEOGRAPHER: The time is 11:20</p> <p>12 a.m. This begins Unit Number 2. We're on the</p> <p>13 record.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Mr. Koepke, have you -- can you think of</p> <p>16 any other places CMS has placed ads that would be</p> <p>17 in the bucket of ads within a logged-in</p> <p>18 experience?</p> <p>19 MS. CLEMONS: Objection to form.</p> <p>20 THE WITNESS: Not off the top of my</p> <p>21 head.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. And another kind of digital ad we've</p> <p>24 discussed was OTT ads. Do you recall that?</p> <p>25 A. Yes.</p>

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<p>1 Q. What -- what places has CMS placed OTT</p> <p>2 ads?</p> <p>3 MS. CLEMONS: Objection to form.</p> <p>4 THE WITNESS: Hulu. I'm pulling a blank</p> <p>5 on a couple of the others. Competitors to Hulu.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. And do you know what mechanism CMS uses</p> <p>8 to place ads on Hulu or other competitors to</p> <p>9 Hulu?</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: We provide direction to</p> <p>12 our contractors to place ads on OTT to reach</p> <p>13 audiences of interest for our programs.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. And do you provide any direction in what</p> <p>16 particular way to place OTT ads in order to reach</p> <p>17 audiences of interest?</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: We provide direction as to</p> <p>20 the tactics and the channels that will reach the</p> <p>21 audiences of our interest.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Do you -- do you direct them to use any</p> <p>24 particular ad-buying tool in order to place ads</p> <p>25 on OTT?</p>	<p>1 who did not make it through the privacy analysis</p> <p>2 and was not approved for use?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: I am not.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. So we've talked about a variety of types</p> <p>8 of digital ads, YouTube, programmatic mobile,</p> <p>9 programmatic video, programmatic display, ads</p> <p>10 with publishers, website takeovers, ads within a</p> <p>11 logged-in experience, including Google Discovery,</p> <p>12 Facebook, Instagram, Twitter and LinkedIn,</p> <p>13 Search, including Google and Bing and</p> <p>14 over-the-top ads, including Hulu and competitors</p> <p>15 of Hulu. How does CMS decide which of those</p> <p>16 digital categories to use when making decisions</p> <p>17 about advertising?</p> <p>18 MS. CLEMONS: Objection; form.</p> <p>19 Foundation.</p> <p>20 THE WITNESS: We consider the audience</p> <p>21 that we try to reach, the behavior we want them</p> <p>22 to do, and the size of the budget that we have at</p> <p>23 our disposal.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Anything else that you consider in</p>
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<p>1 MS. CLEMONS: Objection to form.</p> <p>2 Foundation.</p> <p>3 THE WITNESS: We do.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. And what ad-buying tools do you direct</p> <p>6 the ad agencies to use in order to place ads on</p> <p>7 OTT?</p> <p>8 MS. CLEMONS: Objection; form.</p> <p>9 THE WITNESS: I'm not sure.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Okay. So how do you know that you</p> <p>12 direct them to use particular ad-buying tools?</p> <p>13 A. In our media plans, we approve the</p> <p>14 entire media plan, which included ad-buying</p> <p>15 tools.</p> <p>16 Q. And do all of the ad-buying tools used</p> <p>17 by ad agencies for CMS need to go through the</p> <p>18 privacy analysis that we talked about earlier?</p> <p>19 MS. CLEMONS: Objection; form.</p> <p>20 Foundation.</p> <p>21 THE WITNESS: To the degree that there</p> <p>22 is a data exchange with our website. That's the</p> <p>23 key.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Are you aware of any digital ad provider</p>	<p>1 making a decision on which advertising -- digital</p> <p>2 advertising category to use?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 THE WITNESS: That might vary by</p> <p>5 campaign, but off the top of my head I can't say.</p> <p>6 What I said was the most important.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Does CMS try to create an appropriate</p> <p>9 mix of advertising across all of the categories</p> <p>10 that we've discussed?</p> <p>11 MS. CLEMONS: Objection; form.</p> <p>12 THE WITNESS: What would be your</p> <p>13 definition of appropriate mix?</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. For whatever is -- CMS deems to be</p> <p>16 appropriate for a given campaign. So do you</p> <p>17 decide to use multiple different channels, and,</p> <p>18 if so, how do you make those decisions?</p> <p>19 MS. CLEMONS: Objection; form.</p> <p>20 THE WITNESS: We assess the goal of</p> <p>21 the campaign, the audience that we're trying to</p> <p>22 reach, how we can best reach them, and the amount</p> <p>23 of resources we have.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. And in the course of those</p>

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<p style="text-align: right;">Page 114</p> <p>1 Q. Okay. How about the -- have you</p> <p>2 observed any changes in the availability of</p> <p>3 advertising providers that you could use to reach</p> <p>4 your audience over the 2019 to 2023 time period?</p> <p>5 MS. CLEMONS: Objection to form.</p> <p>6 THE WITNESS: I don't recall.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. So earlier we talked about a lot of the</p> <p>9 different programmatic providers that CMS has</p> <p>10 used.</p> <p>11 A. Mm-hmm.</p> <p>12 Q. Do you recall that testimony?</p> <p>13 A. Yes, I do.</p> <p>14 Q. Okay. With respect to those providers,</p> <p>15 were they all available to CMS in the 2019 year</p> <p>16 as compared to the 2023 year?</p> <p>17 MS. CLEMONS: Objection; form.</p> <p>18 THE WITNESS: I don't recall.</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. Are you aware of any advertising</p> <p>21 providers who were not available to CMS in</p> <p>22 2019 but who are available to CMS in 2023?</p> <p>23 MS. CLEMONS: Objection to form.</p> <p>24 THE WITNESS: I am not.</p> <p>25 BY MS. GOODMAN:</p>	<p style="text-align: right;">Page 116</p> <p>1 best of my recollection, that type of display</p> <p>2 ad has increased in its value to us.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And how does CMS go about -- what</p> <p>5 methods does CMS use to place these kinds of</p> <p>6 prospecting display ads?</p> <p>7 MS. CLEMONS: Objection to form.</p> <p>8 THE WITNESS: We direct our contractors</p> <p>9 to do it on our behalf.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. And do you direct them to use any</p> <p>12 particular provider?</p> <p>13 MS. CLEMONS: Objection to form.</p> <p>14 Foundation.</p> <p>15 THE WITNESS: We will direct them to use</p> <p>16 particular providers.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Okay. So with respect to the increasing</p> <p>19 effectiveness of prospecting display ads, what</p> <p>20 providers have you used?</p> <p>21 MS. CLEMONS: Objection to form.</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p> <p>24 [REDACTED]</p> <p>25 [REDACTED]</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. Okay. So one of the subtle changes</p> <p>2 that you said you observed was that display has</p> <p>3 become more impactful, correct? And when you say</p> <p>4 "display," can you be more detailed about what</p> <p>5 kind of display advertising you mean that has</p> <p>6 become more impactful as in having a higher</p> <p>7 return on investment?</p> <p>8 MS. CLEMONS: Objection to form.</p> <p>9 THE WITNESS: So kind of display really</p> <p>10 covers a lot of categories, because there's</p> <p>11 creative, there's delivery systems, there's</p> <p>12 targeted. Do you have anything particularly in</p> <p>13 mind?</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. No. I want to understand what you mean</p> <p>16 by "display being more impactful."</p> <p>17 A. All right.</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: So to the best of my</p> <p>20 recollection, display ads that -- what we would</p> <p>21 call -- I don't know. Let me see. I've gotta</p> <p>22 think of the term here -- prospecting. So those</p> <p>23 are the ads that go out and find people who could</p> <p>24 benefit from the program, who may or may not have</p> <p>25 ever interacted with the program before. To the</p>	<p>1 [REDACTED]</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 MS. GOODMAN: Shall we take a break for</p> <p>6 lunch?</p> <p>7 MS. CLEMONS: Yeah.</p> <p>8 THE WITNESS: I'm good with whatever.</p> <p>9 THE VIDEOGRAPHER: The time is 12:22</p> <p>10 p.m. This ends Unit 2. We're off the record.</p> <p>11 (Lunch recess taken.)</p> <p>12 (Exhibit No. 65, a document Bates</p> <p>13 Numbered CMS-ADS-11906 through 11974, was</p> <p>14 introduced.)</p> <p>15 THE VIDEOGRAPHER: The time is 1:14 p.m.</p> <p>16 This begins Unit Number 3. We're on the record.</p> <p>17 BY MS. GOODMAN:</p> <p>18 Q. Mr. Koepke, I'm going to hand you a</p> <p>19 document marked Exhibit 65, CMS-ADS-11906 through</p> <p>20 11974.</p> <p>21 And this is a technical proposal from</p> <p>22 Weber Shandwick for Healthcare.gov 2010 Open</p> <p>23 Enrollment campaign, correct?</p> <p>24 A. I'm not sure. It's going to take me a</p> <p>25 minute to look at it.</p>

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<p>1 Q. Sure.</p> <p>2 A. It appears as such.</p> <p>3 Q. Okay. And what is the purpose of a</p> <p>4 technical proposal, to your knowledge?</p> <p>5 MS. CLEMONS: Objection; form.</p> <p>6 THE WITNESS: A technical proposal is</p> <p>7 part of a contracting process. So the offerers,</p> <p>8 which are the different ad agencies who might be</p> <p>9 interested in contracting with the federal</p> <p>10 government, would write a technical proposal to</p> <p>11 show their abilities to meet the standards that</p> <p>12 the federal government has set forward.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. And did multiple different contractors</p> <p>15 compete each year for the Open Enrollment</p> <p>16 campaign, or was it only Webber Shandwick?</p> <p>17 MS. CLEMONS: Objection to form.</p> <p>18 THE WITNESS: Each year?</p> <p>19 BY MS. GOODMAN:</p> <p>20 Q. Each year.</p> <p>21 A. Okay. It was not always only Weber</p> <p>22 Shandwick, to the best of my knowledge. I'm</p> <p>23 actually not a hundred percent sure, but -- so I</p> <p>24 don't know.</p> <p>25 Q. Okay. As the director of the Strategic</p>	<p>1 Marketing Group" incorrectly. It sounded correct</p> <p>2 to me.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. Okay. I don't understand what the</p> <p>5 detail with respect to the Strategic Marketing</p> <p>6 Group led you to say no to my question.</p> <p>7 MS. CLEMONS: Objection to form.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. Can you explain that to me?</p> <p>10 A. Your question had three parts: Have I</p> <p>11 ever read a technical proposal. Is it about</p> <p>12 advertising. And is it for the Strategic</p> <p>13 Marketing Group at CMS. I guess that's four</p> <p>14 parts.</p> <p>15 The Strategic Marketing Group did not</p> <p>16 exist when I read the technical proposals.</p> <p>17 Q. When did you read the technical</p> <p>18 proposals?</p> <p>19 MS. CLEMONS: Objection to form.</p> <p>20 THE WITNESS: The early 2000s.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. So since the early 2000s, is it accurate</p> <p>23 that you have not read the strat -- the technical</p> <p>24 proposals submitted by ad agencies?</p> <p>25 MS. CLEMONS: Objection to form.</p>
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<p>1 man -- Marketing Group, did you review technical</p> <p>2 proposals?</p> <p>3 A. No, I did not.</p> <p>4 MS. CLEMONS: Objection to form.</p> <p>5 THE WITNESS: I'm so sorry.</p> <p>6 BY MS. GOODMAN:</p> <p>7 Q. Have you ever had occasion to read</p> <p>8 them?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: Have I ever had the</p> <p>11 occasion to read a technical proposal of any</p> <p>12 sort?</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Of -- related to any advertising</p> <p>15 campaign handled by the Strategic Marketing Group</p> <p>16 at CMS.</p> <p>17 A. You had a lot of very specific details</p> <p>18 in that question that would lead me to say no.</p> <p>19 Q. What are the specific details in my</p> <p>20 question that would lead you to say no?</p> <p>21 A. One of them was the "Strategic Marketing</p> <p>22 Group."</p> <p>23 Q. Did I state that incorrectly?</p> <p>24 MS. CLEMONS: Objection to form.</p> <p>25 THE WITNESS: You did not say "Strategic</p>	<p>1 THE WITNESS: The technical proposals</p> <p>2 are written by -- are read and judged by trained</p> <p>3 staff who work for me.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. And so your trained staff read</p> <p>6 and review them, but you do not; is that correct?</p> <p>7 A. That is correct.</p> <p>8 Q. Okay. Do you discuss the technical</p> <p>9 proposals with your staff?</p> <p>10 A. I do not.</p> <p>11 Q. Why not?</p> <p>12 A. Because it is inappropriate for people</p> <p>13 judging a technical proposal to talk with other</p> <p>14 people about it in the process of an acquisition.</p> <p>15 Q. Why is that improper or inappropriate?</p> <p>16 A. I would only be doing conjecture, but</p> <p>17 it's -- the government has a goal to be fair to</p> <p>18 all businesses. And so, therefore, the people</p> <p>19 who read the proposals and judge them are doing</p> <p>20 so in a non-biased sense. And discussing with</p> <p>21 anyone else could -- could increase or add bias</p> <p>22 to a process.</p> <p>23 Q. And which of your staff reviewed</p> <p>24 technical proposals for the Healthcare.gov Open</p> <p>25 Enrollment campaigns in the '19 to '23 time</p>

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<p>1 Q. So you can't answer -- you are unable</p> <p>2 to answer that question without relying on</p> <p>3 privileged communications; is that correct?</p> <p>4 A. That is correct.</p> <p>5 Q. So you've never raised those concerns</p> <p>6 with anybody at your advertising agencies, for</p> <p>7 example. Is that accurate?</p> <p>8 A. As part of the informal conversations</p> <p>9 with colleagues, I can't recall.</p> <p>10 Q. Okay. You referenced DoubleClick. What</p> <p>11 is DoubleClick?</p> <p>12 A. DoubleClick is a tool that allows us to</p> <p>13 track ad performance and our websites together.</p> <p>14 Q. So it's a -- it's an -- a data</p> <p>15 monitoring tool. Is that accurate?</p> <p>16 A. From my understanding, that's partially</p> <p>17 accurate. It's also a data-creating tool.</p> <p>18 Q. And Google Analytics, has CMS decided</p> <p>19 not to use Google Analytics anymore --</p> <p>20 MS. CLEMONS: Objection; form.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. -- within the Strategic Marketing Group,</p> <p>23 at least?</p> <p>24 A. The Strategic Marketing Group did not</p> <p>25 decide not to use Google Analytics.</p>	<p>1 networks and talk about the price of what's</p> <p>2 available.</p> <p>3 BY MS. GOODMAN:</p> <p>4 Q. And do you participate in discussions</p> <p>5 between advertising agencies and any vendors over</p> <p>6 price for ad buys on behalf of CMS?</p> <p>7 MS. CLEMONS: Objection to form.</p> <p>8 THE WITNESS: We participate in</p> <p>9 conversations with the ad agencies over price and</p> <p>10 what they've done to negotiate, and we provide</p> <p>11 direction when we think there's other</p> <p>12 negotiations that should be done.</p> <p>13 BY MS. GOODMAN:</p> <p>14 Q. Okay. But you -- but does any</p> <p>15 individual from CMS actually participate in the</p> <p>16 negotiations over price?</p> <p>17 MS. CLEMONS: Objection to form.</p> <p>18 Foundation.</p> <p>19 THE WITNESS: To the extent that we</p> <p>20 direct our ad agencies on negotiating a price, we</p> <p>21 do participate.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. Okay. Beyond -- aside from the</p> <p>24 extent to which you direct your ad agencies on</p> <p>25 negotiating a price, is there any other way in</p>
Page 227	Page 229
<p>1 Q. Did somebody else decide not to use</p> <p>2 Google Analytics?</p> <p>3 MS. CLEMONS: Objection; form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: By "somebody else,"</p> <p>6 would -- could you give me a little more on that?</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Is the Strategic Marketing Group -- has</p> <p>9 the Strategic Marketing Group transitioned from</p> <p>10 using Google Analytics to an Adobe product?</p> <p>11 A. The Strategic Marketing Group is in the</p> <p>12 process of that right now.</p> <p>13 Q. Okay. Why are you in that process now?</p> <p>14 A. The people who manage the websites,</p> <p>15 which is different from the Strategic Marketing</p> <p>16 Group, made a decision to go from Google</p> <p>17 Analytics to the Adobe product.</p> <p>18 Q. Okay. So under the agency -- the</p> <p>19 CMS's contracts with advertising agencies, is it</p> <p>20 accurate that the advertising agency negotiates</p> <p>21 the prices to be paid for advertising?</p> <p>22 MS. CLEMONS: Objection to form.</p> <p>23 Foundation.</p> <p>24 THE WITNESS: In an ad agency, there</p> <p>25 are buyers who get on the phones, like, with TV</p>	<p>1 which you participate in such negotiations? And</p> <p>2 when I say "you," I mean CMS individuals.</p> <p>3 MS. CLEMONS: Objection to form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: Our participation is</p> <p>6 through the direction of those who work for us.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. Okay. The advertising purchases which</p> <p>9 your ad agency makes on behalf of CMS are part of</p> <p>10 a bundle of services that the ad agency provides,</p> <p>11 correct?</p> <p>12 MS. CLEMONS: Objection; form.</p> <p>13 Foundation.</p> <p>14 THE WITNESS: I'm not sure what you mean</p> <p>15 by "bundle."</p> <p>16 BY MS. GOODMAN:</p> <p>17 Q. A group of services that the ad agency</p> <p>18 provides includes buying ads, as well as other</p> <p>19 services, correct?</p> <p>20 MS. CLEMONS: Objection to form.</p> <p>21 Foundation.</p> <p>22 THE WITNESS: I would say that we</p> <p>23 contract with the ad agencies to help us</p> <p>24 implement our ad campaigns.</p> <p>25 BY MS. GOODMAN:</p>

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<p>1 Q. And that includes both buying ads as</p> <p>2 well as other services, correct?</p> <p>3 MS. CLEMONS: Objection to form.</p> <p>4 Foundation.</p> <p>5 THE WITNESS: There are other activities</p> <p>6 involved.</p> <p>7 BY MS. GOODMAN:</p> <p>8 Q. And -- okay.</p> <p>9 The ad agencies with whom CMS works, are</p> <p>10 they independent of CMS?</p> <p>11 MS. CLEMONS: Objection; form.</p> <p>12 THE WITNESS: What is your definition of</p> <p>13 "independent of CMS"?</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. They're a separate entity.</p> <p>16 MS. CLEMONS: Objection to form. Calls</p> <p>17 for a legal conclusion.</p> <p>18 THE WITNESS: They are contracted</p> <p>19 entity.</p> <p>20 BY MS. GOODMAN:</p> <p>21 Q. Okay. Separate from CMS, correct?</p> <p>22 MS. CLEMONS: Objection to form.</p> <p>23 THE WITNESS: Bound by a contract.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. And does CMS control the ad agency's</p>	<p>1 Direct and control are very similar.</p> <p>2 Q. Okay. When the -- when a advertising</p> <p>3 budget is set for a particular channel of</p> <p>4 advertising, does the ad agency have discretion</p> <p>5 on how to spend that budget within the channel?</p> <p>6 MS. CLEMONS: Objection to form.</p> <p>7 THE WITNESS: No.</p> <p>8 BY MS. GOODMAN:</p> <p>9 Q. No? Why not?</p> <p>10 A. Because we do.</p> <p>11 Q. What do you mean by that?</p> <p>12 A. Well, as we've discussed earlier today,</p> <p>13 even optimizations go through ATBs. Those ATBs</p> <p>14 are a form of the direction that we give the</p> <p>15 advertiser on how to spend the budget.</p> <p>16 Q. Okay. So if an ATB authorizes \$10,000</p> <p>17 in purchases for social media, does the ad agency</p> <p>18 have discretion on how to spend that \$10,000</p> <p>19 within the social media category?</p> <p>20 MS. CLEMONS: Objection to form.</p> <p>21 THE WITNESS: No. There are -- no.</p> <p>22 BY MS. GOODMAN:</p> <p>23 Q. And why not?</p> <p>24 A. Because in the end, CMS is responsible</p> <p>25 for how we're spending taxpayer dollars and</p>
Page 231	Page 233
<p>1 activities?</p> <p>2 MS. CLEMONS: Objection to form. Calls</p> <p>3 for a legal conclusion. Foundation.</p> <p>4 THE WITNESS: All their activities?</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Does CMS control the ad agency's</p> <p>7 activities relative to the advertising services</p> <p>8 that the ad agency provides to CMS?</p> <p>9 MS. CLEMONS: Objection to form. Calls</p> <p>10 for a legal conclusion. Foundation.</p> <p>11 THE WITNESS: Control is not a term I've</p> <p>12 used before. Direct. But I can see how they are</p> <p>13 related, so we direct those activities.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. But you would not say that CMS controls</p> <p>16 their activities. Is that accurate?</p> <p>17 MS. CLEMONS: Objection; form. Calls</p> <p>18 for a legal conclusion. Foundation.</p> <p>19 THE WITNESS: Well, I would say that we</p> <p>20 control their activities.</p> <p>21 BY MS. GOODMAN:</p> <p>22 Q. Why is that?</p> <p>23 A. Well, in part, I never thought about it</p> <p>24 like that until you just -- you just started</p> <p>25 using the word.</p>	<p>1 responsible for the impact of our campaigns.</p> <p>2 Q. And so is it accurate that CMS directs</p> <p>3 the ad agency to spend \$10 on Facebook, \$10 on</p> <p>4 Instagram, \$10 on LinkedIn, or is that specific</p> <p>5 allocation within the discretion of the</p> <p>6 advertising agency, so long as it is within</p> <p>7 the authorization to buy?</p> <p>8 MS. CLEMONS: Objection to form.</p> <p>9 THE WITNESS: If there was any</p> <p>10 discretion, that would be discretion given by</p> <p>11 CMS.</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. Okay.</p> <p>14 A. But I am not aware of any such</p> <p>15 discretion.</p> <p>16 Q. Can you go back to Exhibit 69?</p> <p>17 And if you turn to Page 810, this is an</p> <p>18 authorization to buy, correct?</p> <p>19 A. It's gonna take me a minute to ascertain</p> <p>20 that.</p> <p>21 (Reviews document.)</p> <p>22 Yes. Correct.</p> <p>23 Q. Okay. And you see that this particular</p> <p>24 example states, just under the chart, that</p> <p>25 "Centers for Medicare and Medicaid services</p>


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<p>1 client signature authorizes Weber Shandwick</p> <p>2 Agency to purchase media totaling 8. --</p> <p>3 \$8,219,893, plus or minus 5 percent, correct?</p> <p>4 A. Correct.</p> <p>5 Q. So that "plus or minus 5 percent," is</p> <p>6 that committed to the discretion of the ad agency</p> <p>7 for the -- for buying purposes?</p> <p>8 MS. CLEMONS: Objection to form.</p> <p>9 THE WITNESS: No.</p> <p>10 BY MS. GOODMAN:</p> <p>11 Q. Why not?</p> <p>12 A. There are many factors that go into the</p> <p>13 availability of -- of media at any given time,</p> <p>14 the availability of a purchase. And some of</p> <p>15 these tactics, channels, such as search,</p> <p>16 the amount of spend there is what we call</p> <p>17 demand-driven, which isn't just that you've made</p> <p>18 a decision "I'm going to spend a hundred thousand</p> <p>19 dollars on search," but it depends on how many</p> <p>20 people actually search the terms that you're</p> <p>21 bidding on to put those ads. Therefore, there is</p> <p>22 a natural fluctuation in ad availability and ad</p> <p>23 cost that neither CMS nor Weber Shandwick can be</p> <p>24 a hundred percent held accountable. So we give</p> <p>25 ourselves a 5 percent plus or minus within these</p>	<p>1 supposed to be spent as in -- as directed in the</p> <p>2 flowcharts of what we looked at before for these</p> <p>3 campaigns.</p> <p>4 BY MS. GOODMAN:</p> <p>5 Q. Okay. And each and every time a</p> <p>6 purchase is, in fact, made according to the</p> <p>7 flowcharts, are you made aware of that, or of the</p> <p>8 price that is paid at that particular time?</p> <p>9 A. We --</p> <p>10 MS. CLEMONS: Objection to form.</p> <p>11 THE WITNESS: We monitor on a very close</p> <p>12 basis how that money is spent over time and in</p> <p>13 what channels.</p> <p>14 BY MS. GOODMAN:</p> <p>15 Q. Okay. Does the ad agency obtain</p> <p>16 anybody's approval at CMS prior to making any</p> <p>17 particular advertising buy so long as it is</p> <p>18 within the authorization to buy?</p> <p>19 MS. CLEMONS: Objection to form.</p> <p>20 THE WITNESS: The authorization to buy</p> <p>21 provides the government a lot of control and</p> <p>22 provides a lot of direction to how the ad agency</p> <p>23 then carries out the minutia of the budget.</p> <p>24 BY MS. GOODMAN:</p> <p>25 Q. Okay. And so is anybody at CMS aware</p>
Page 235	Page 237
<p>1 numbers based on that.</p> <p>2 Q. Okay. And the sentence here that says,</p> <p>3 "With client's consent, shifts in allocation of</p> <p>4 the spend across channels may be made without the</p> <p>5 need for a new ATB so long as the total spend</p> <p>6 does not exceed the amount authorized in this</p> <p>7 document," what does that mean?</p> <p>8 A. That means that we can direct the</p> <p>9 media buy and not have an ATB every single time</p> <p>10 -- optimizations of not having an ATB every</p> <p>11 single time.</p> <p>12 Q. And when your advertising agency is</p> <p>13 making ad purchases for CMS, are you aware of</p> <p>14 each and every time they are making a purchase on</p> <p>15 Google or through the Trade Desk or through AARP</p> <p>16 and the exact price that is negotiated for such</p> <p>17 purchases are agreed?</p> <p>18 MS. CLEMONS: Objection to form.</p> <p>19 THE WITNESS: Well, as -- my</p> <p>20 understanding is in the time period of this,</p> <p>21 there's 44 campaigns, something like that, me</p> <p>22 personally, not necessarily everything, but my</p> <p>23 staff is.</p> <p>24 We are aware of the allocation of</p> <p>25 the budget and the timelines for when they are</p>	<p>1 -- made aware of each and every time that the ad</p> <p>2 agency is carrying out the minutia of the budget?</p> <p>3 MS. CLEMONS: Objection to form.</p> <p>4 THE WITNESS: Not to my knowledge.</p> <p>5 BY MS. GOODMAN:</p> <p>6 Q. Okay. And is carrying out the minutia</p> <p>7 of the budget committed to the discretion of the</p> <p>8 ad agency?</p> <p>9 MS. CLEMONS: Objection to form.</p> <p>10 THE WITNESS: What is your definition of</p> <p>11 "minutia of the budget"?</p> <p>12 BY MS. GOODMAN:</p> <p>13 Q. I'm using it as you used the term, so</p> <p>14 you tell me how you're using it.</p> <p>15 A. So the exact hour that somebody gets</p> <p>16 on the phone call and -- and told -- talks to</p> <p>17 somebody about the placement of an ad, actually,</p> <p>18 we've actually reviewed all of those too, on some</p> <p>19 campaigns, the exact placement of every single</p> <p>20 ad. That is what I would call the minutia.</p> <p>21 What I would call the important control</p> <p>22 and the important direction is the, "these are</p> <p>23 the channels we're going to use; this is the</p> <p>24 audience we're gonna reach; this is the delivery</p> <p>25 we expect for that," and on a weekly basis how</p>

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<p style="text-align: right;">Page 290</p> <p>1 deposition is over and that Google does not have</p> <p>2 grounds to hold the deposition open.</p> <p>3 MS. GOODMAN: Okay. Thank you for your</p> <p>4 time, Mr. Koepke.</p> <p>5 THE WITNESS: It was my pleasure. This</p> <p>6 was fun.</p> <p>7 THE VIDEOGRAPHER: Time is 6:23 p.m.</p> <p>8 We're off the record.</p> <p>9 (Deposition concluded -- 6:23 p.m.)</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 292</p> <p>1 Katherine Clemons Esq</p> <p>2 Katherine.clemons@usdoj.gov</p> <p>3 August 22nd, 2023</p> <p>4 RE: United States, Et Al v. Google, LLC</p> <p>5 8/21/2023, Christopher Koepke (#6043164)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 (erratas-cs@veritext.com).</p> <p>16</p> <p>17 Return completed errata within 30 days from</p> <p>18 receipt of testimony.</p> <p>19 If the witness fails to do so within the time</p> <p>20 allotted, the transcript may be used as if signed.</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 291</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 I do hereby certify that I am a Notary</p> <p>4 Public in good standing, that the aforesaid</p> <p>5 testimony was taken before me, pursuant to</p> <p>6 notice, at the time and place indicated; that</p> <p>7 said deponent was by me duly sworn to tell the</p> <p>8 truth, the whole truth, and nothing but the</p> <p>9 truth; that the testimony of said deponent was</p> <p>10 correctly recorded in machine shorthand by me and</p> <p>11 thereafter transcribed under my supervision with</p> <p>12 computer-aided transcription; that the deposition</p> <p>13 is a true and correct record of the testimony</p> <p>14 given by the witness; and that I am neither of</p> <p>15 counsel nor kin to any party in said action, nor</p> <p>16 interested in the outcome thereof.</p> <p>17</p> <p>18 WITNESS my hand and official seal this</p> <p>19 22nd day of</p> <p>20 </p> <p>21</p> <p>22 Notary Public</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 293</p> <p>1 United States, Et Al v. Google, LLC</p> <p>2 Christopher Koepke (#6043164)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE ____ LINE ____ CHANGE ____</p> <p>5</p> <p>6 REASON ____</p> <p>7 PAGE ____ LINE ____ CHANGE ____</p> <p>8</p> <p>9 REASON ____</p> <p>10 PAGE ____ LINE ____ CHANGE ____</p> <p>11</p> <p>12 REASON ____</p> <p>13 PAGE ____ LINE ____ CHANGE ____</p> <p>14</p> <p>15 REASON ____</p> <p>16 PAGE ____ LINE ____ CHANGE ____</p> <p>17</p> <p>18 REASON ____</p> <p>19 PAGE ____ LINE ____ CHANGE ____</p> <p>20</p> <p>21 REASON ____</p> <p>22</p> <p>23</p> <p>24 Christopher Koepke Date</p> <p>25</p>

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1 United States, Et Al v. Google, LLC

2 Christopher Koepke (#6043164)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Christopher Koepke, do hereby declare that I

5 have read the foregoing transcript, I have made any

6 corrections, additions, or changes I deemed necessary as

7 noted above to be appended hereto, and that the same is

8 a true, correct and complete transcript of the testimony

9 given by me.

10

11 _____

12 Christopher Koepke Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

16

17

18 _____

19 NOTARY PUBLIC

20

21

22

23

24

25

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United States, Et Al v. Google, LLC

Christopher Koepke (#6075382)

E R R A T A S H E E T

PAGE 11 LINE 4 CHANGE _____

"neck" should read "NEC"

REASON _____

PAGE 66 LINE 16 CHANGE _____

"organization" should read "authorization"

REASON _____

PAGE 89 LINE 21 CHANGE _____

"Aaron Blazer" should read "Erin Blazar"

REASON _____

PAGE 90 LINE 2 CHANGE _____

"Aaron Blazer" should read "Erin Blazar"

REASON _____

PAGE 90 LINE 6 CHANGE _____

"Aaron" should read "Erin"

REASON _____

PAGE 91 LINE 14 CHANGE _____

"Aaron Blazer" should read "Erin Blazar"

REASON _____

Page: 102 Line: 6 Change: "DO" should read "DOJ"

Christopher P. Koepke

S

Digitally signed by Christopher P.
Koepke -S
Date: 2023.09.29 11:18:12 -04'00'

9/29/23

Christopher Koepke

Date

1 United States, Et Al v. Google, LLC

2 Christopher Koepke (#6075382)

3 ACKNOWLEDGEMENT OF DEPONENT

4 I, Christopher Koepke, do hereby declare that I
5 have read the foregoing transcript, I have made any
6 corrections, additions, or changes I deemed necessary as
7 noted above to be appended hereto, and that the same is
8 a true, correct and complete transcript of the testimony
9 given by me.

10 Christopher P.
11 Koepke -S

Digitally signed by Christopher
P. Koepke -S
Date: 2023.09.29 11:56:51
-04'00'

9/29/23

12 Christopher Koepke

Date

13 *If notary is required

14 SUBSCRIBED AND SWORN TO BEFORE ME THIS

15 _____ DAY OF _____, 20____.

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19 NOTARY PUBLIC
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